

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Bonnie Lynn Hammer :

for Redetermination of a Deficiency or for Refund :
of Personal Income Tax under Article 22 of the Tax :
Law for the Year 1980. :

In the Matter of the Petition :
of
Todd Benjamin Hammer : AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or for Refund :
of Personal Income Tax under Article 22 of the Tax :
Law for the Year 1980. :

In the Matter of the Petition :
of
Jill Nancy Hammer :

for Redetermination of a Deficiency or for Refund :
of Personal Income Tax under Article 22 of the Tax :
Law for the Year 1980. :

State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 6th day of March, 1985, he served the within notice of Decision by certified mail upon Jill Nancy Hammer, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jill Nancy Hammer
15 Richbourne Lane
Melville, NY 11747

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

Page 2

Affidavit of Mailing

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
6th day of March, 1985.

David Parshuck

Conrad A. Hagedorn
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

March 6, 1985

Jill Nancy Hammer
15 Richbourne Lane
Melville, NY 11747

Dear Ms. Hammer:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 690 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Michael Weinstein
Rothstein & Weinstein
425 Broad Hollow Rd.
Melville, NY 11747
Taxing Bureau's Representative

STATE OF NEW YORK

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David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 6th day of March, 1985, he served the within notice of Decision by certified mail upon Todd Benjamin Hammer, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Todd Benjamin Hammer
15 Richbourn Lane
Melville, NY 11747

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

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That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
6th day of March, 1985.

David Parabuck

Conrad A. Haglund
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

March 6, 1985

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15 Richbourne Lane
Melville, NY 11747

Dear Mr. Hammer:

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STATE TAX COMMISSION

cc: Petitioner's Representative
Michael Weinstein
Rothstein & Weinstein
425 Broad Hollow Rd.
Melville, NY 11747
Taxing Bureau's Representative

STATE OF NEW YORK

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State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 6th day of March, 1985, he served the within notice of Decision by certified mail upon Bonnie Lynn Hammer, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Bonnie Lynn Hammer
15 Richbourne Lane
Melville, NY 11747

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

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Affidavit of Mailing

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
6th day of March, 1985.

David Parbuck

Cornie A. England

Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

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State of New York :
ss.:
County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 6th day of March, 1985, he served the within notice of Decision by certified mail upon Michael Weinstein, the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Michael Weinstein
Rothstein & Weinstein
425 Broad Hollow Rd.
Melville, NY 11747

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

Page 2

Affidavit of Mailing

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
6th day of March, 1985.

David Parcluck

James A. Haglund

Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

March 6, 1985

Bonnie Lynn Hammer
15 Richbourne Lane
Melville, NY 11747

Dear Ms. Hammer:

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You have now exhausted your right of review at the administrative level. Pursuant to section(s) 690 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

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STATE TAX COMMISSION

cc: Petitioner's Representative
Michael Weinstein
Rothstein & Weinstein
425 Broad Hollow Rd.
Melville, NY 11747
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
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 of :
 :
 BONNIE LYNN HAMMER :
 :
 for Redetermination of a Deficiency or for :
 Refund of Personal Income Tax under Article 22 :
 of the Tax Law for the Year 1980. :
 :

In the Matter of the Petition :
 :
 of :
 :
 TODD BENJAMIN HAMMER :
 :
 for Redetermination of a Deficiency or for :
 Refund of Personal Income Tax under Article 22 :
 of the Tax Law for the Year 1980. :
 :

DECISION

In the Matter of the Petition :
 :
 of :
 :
 JILL NANCY HAMMER :
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 for Redetermination of a Deficiency or for :
 Refund of Personal Income Tax under Article 22 :
 of the Tax Law for the Year 1980. :
 :

Petitioners, Bonnie Lynn Hammer, Todd Benjamin Hammer and Jill Nancy Hammer, 15 Richbourne Lane, Melville, New York 11747, filed petitions for redetermination of deficiencies or for refunds of personal income tax under Article 22 of the Tax Law for the year 1980 (File Nos. 40823, 40824 and 40825).

A formal hearing was held before Daniel J. Ranalli, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 20, 1984 at 1:15 P.M., with all briefs to be submitted by December 27, 1984. Petitioners appeared by Michael Weinstein, Esq. and Alan E.

Weiner, C.P.A. The Audit Division appeared by John P. Dugan, Esq. (Angelo A. Scopellito, Esq., of counsel).

ISSUE

Whether petitioners properly applied the resident tax credit for taxes paid to the State of New Jersey against the New York State minimum income tax.

FINDINGS OF FACT

1. Petitioners, Bonnie Lynn Hammer, Todd Benjamin Hammer and Jill Nancy Hammer, were members of a partnership which owned real property located in New Jersey. In 1980, the partnership sold the real property and recognized a long-term capital gain. Petitioners filed 1980 New Jersey emergency transportation tax nonresident returns on which the long-term capital gain was treated as an item of tax preference resulting in the payment of minimum income tax to New Jersey. Petitioners paid New Jersey taxes in the following amounts:

Bonnie Lynn Hammer	\$15,946.00
Todd Benjamin Hammer	\$15,944.00
Jill Nancy Hammer	\$15,947.00

2. Each petitioner also filed a 1980 New York State Income Tax Resident Return including the long-term capital gain which was treated as an item of tax preference resulting in New York minimum income tax due. Petitioners claimed the resident tax credit for the taxes paid to New Jersey to the extent of computed New York State tax as follows:

Bonnie Lynn Hammer	\$10,624.08
Todd Benjamin Hammer	\$10,634.86
Jill Nancy Hammer	\$10,645.36

The resident tax credit offset the New York State personal income tax of each petitioner. Petitioners filed and paid New York minimum income taxes as follows:

Bonnie Lynn Hammer	\$4,589.76
Todd Benjamin Hammer	\$4,594.68
Jill Nancy Hammer	\$4,590.24

3. On or about December 18, 1981, petitioners filed amended New York State income tax returns claiming refunds in the amounts of the minimum income taxes paid pursuant to their original returns discussed supra. Petitioners computed the refunds by increasing the resident tax credit to offset the minimum income tax paid, in addition to the personal income tax as filed on the original returns.

4. On July 26, 1982, the Audit Division issued a denial of refund to each petitioner. The Audit Division's position is that the minimum income tax on residents may not be reduced by the resident tax credit for taxes paid to other states.

CONCLUSIONS OF LAW

A. That section 601-A of the Tax Law imposes a tax on the New York minimum taxable income of every individual, estate or trust in addition to the personal income tax imposed under section 601 of the Tax Law.

B. That section 620 of the Tax Law allows a credit to residents for income taxes paid to other states or their political subdivisions or to the District of Columbia on income which is also subject to New York taxation. Section 622(d) of the Tax Law specifically provides, inter alia, that the resident credit against tax otherwise allowable under section 620 shall not be allowed as a credit against the minimum income tax imposed by section 601-A of the Tax Law.

C. That petitioners' reliance on Matter of Levine, State Tax Commission, September 28, 1979, is misplaced. Levine held that minimum income tax paid to New Jersey under the New Jersey emergency transportation tax was properly

includible as an income tax paid to another state in computing the resident tax credit provided for in section 620(a) of the Tax Law. Levine did not hold that the resident tax credit could be applied against the New York State minimum income tax. Such an application is specifically precluded by section 622(d). Therefore, petitioners' original returns, wherein they included the New Jersey minimum tax in computing the resident tax credit but applied such credit only against the personal income tax computed, were properly filed. Petitioners' attempt to apply the resident credit against their minimum income tax was improper and correctly disallowed by the Audit Division.


D. That the petitions of Bonnie Lynn Hammer, Todd Benjamin Hammer and Jill Nancy Hammer are denied and the denials of refund issued July 26, 1982 are sustained.

DATED: Albany, New York

STATE TAX COMMISSION

MAR 06 1985


PRESIDENT


COMMISSIONER


COMMISSIONER